



# Accounting for human rights: The challenge of globalization and foreign investment agreements<sup>☆</sup>

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## ABSTRACT

The triumph of neoliberalism has promoted trade and investment as the dominant routes to economic and social development. This has further enhanced the power of transnational corporations. Developing countries are increasingly expected to secure foreign investment to stimulate their economies and lift the local population out of poverty. However, foreign investment also has implications for protection and enjoyment of human rights. Transnational corporations manage their risks by imposing stabilization clauses on host countries that constrain their ability to protect and enhance human rights. Conventional accounting and corporate social responsibility reports seem to be unable to respond to the emerging agenda on human rights. This paper seeks to stimulate debates about the protection and enjoyment of human rights by drawing attention to the way corporations constrain governments and people through clauses in investment agreements. Some evidence is provided through an examination of an investment agreement relating to the Chad–Cameroon oil and pipeline project. The paper calls for the production of counter accounts to challenge the hegemony of corporations and create spaces for the enjoyment of human rights.

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## 1. Introduction

The triumph of neoliberalism (Fukuyama, 1992) and the associated increase in corporate influence on the daily lives of the people and their right to food, water, shelter, security, paid employment, safety at work, clean and a non-discriminatory environment has deepened calls for greater corporate accountability (Mitchell and Sikka, 2005). Rather than enhancing democratic control of corporations<sup>1</sup> and aligning corporate conduct with the basic human rights<sup>2</sup> and freedoms, as enshrined in the Universal Declaration of Human Rights<sup>3</sup> (UDHR), the trend has been to expand the scope of annual accounting reports published by corporations even though they are often a poor medium of corporate accountability (Jones, 2011). This has been supplemented by a variety of corporate social responsibility (CSR) reports (for example, see Bakan, 2004; Banerjee, 2007; Cooper, 2004; Demirag, 2005; Frederick, 2006; Hawkins, 2006; Solomon, 2007). Some may laud the glossy CSR reports as evidence of corporate responsiveness to public pressures, but much of this responsiveness is primarily linked to the ability

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<sup>1</sup> For example, through rights for local communities and employees to elect directors, public right of access to corporate agreements and subordinating corporate objectives to social priorities of eradication of poverty, discrimination and exclusion.

<sup>2</sup> These are the outcomes of a long history of political debates and struggles (for an indication see Donnelly, 2003; Ovey and White, 2006; Thompson, 1968).

<sup>3</sup> <http://www.un.org/en/documents/udhr/>; accessed 26 June 2010.

to make profits (Unerman and O'Dwyer, 2007). There is a suspicion that a large volume of the CSR reports are self-serving (Sikka, 2010) and corporate disclosures are frequently selective and part of the ideological battle to both accommodate and resist change (Adams, 2004; Spence, 2009). As the chief executive of Unilever put it,

“Corporate social responsibility is a hard-edged business decision. Not because it is nice to do or because people are forcing us to do it, or because I want to do nice interviews . . . , but because it is good for our business . . . This is a hard-edged business issue.” (The Guardian,<sup>4</sup> 5 July 2003).

The tensions between the hard-edged business practices geared to increasing profits for shareholders and the enjoyment of human rights by the people (Amnesty International, 2006; Christian-Aid, 2008; Environmental Defense Fund, 1999; ETC Group, 2008) have persuaded some to argue that corporate power cannot easily be reconciled with democracy and respect for human rights (Bakan, 2004; Hertz, 2001). Increasingly, there are calls for the development of “binding legal norms that hold corporations to human rights standards and circumscribe potential abuses of their position of power” (United Nations, 2003, p. 20). Such calls are infused with moral and ethical positions that emphasise the brotherhood of man and common humanity (Donnelly, 2003). They also assume that citizens will have sufficient information to enable them to make judgements about corporate performance and apply sanctions, where the standards of accountability are deemed to be deficient. In the final analysis, the state is assumed to be powerful enough to check abuses and develop and enforce legal norms. These assumptions, as the paper will later show, are highly problematical.

The need to hold corporations to account arises from developments in international law (Jochnick, 1999; Ratner, 2001), obligations arising out of the 1948 Universal Declaration of Human Rights<sup>5</sup> (UDHR) and related treaties<sup>6</sup> and articles promulgated by the United Nations (UN). The UDHR commits all UN member states to respect, protect and enforce the human rights of every individual to a standard of living for adequate health and wellbeing, including the right to food, water, clothing, medical care, housing and social services. It guarantees that everyone has the right to freedom of thought, conscience and religion. No one is to be subjected to arbitrary arrest, detention or exile and everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to them by law. The UDHR preamble states that it is “a common standard of achievement for all peoples and all nations” and requires that

“every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction”.

The informed legal opinion is that the UDHR reference (see above) to “every individual includes juridical persons. Every individual and every organ of society excludes no one, no company, no market, no cyberspace. The Universal Declaration applies to them all” (International Council on Human Rights Policy, 2002, p. 159). Thus obligations to respect and protect human rights and provide a remedy for injured parties rests not only on the state but also on corporations<sup>7</sup> (United Nations Human Rights Council, 2008), considered to be an important “organ of society” (see above).

Public anxieties about respect and protection of human rights are fuelled by intensification of globalization and the related increase in the power of corporations. Transnational corporations are now a key source of cross-border investment and their quest for private profits frequently brings them in conflict with workers and local communities (Klein, 2001; Korten, 2001). Developing countries may welcome foreign investment to generate jobs and economic development, but it can also have an adverse effect on enjoyment of human rights, including labour rights, security, sovereignty of the state and even the right to life. Corporations have been accused of lax health and safety standards and inflicting death and injuries on innocent people (Hanna et al., 2005). By avoiding taxes, corporations deprive governments of scarce resources which could be used to develop social infrastructure and improve the quality of life of people by providing education, healthcare, security and pensions (Christian-Aid, 2008; Global Witness, 2006). In pursuit of profits, some corporations have knowingly colluded with murderous and corrupt regimes (Black, 2001; Clark, 1994; Rowell et al., 2005) and have been actively assisted by accounting technologies (Funnell, 1998).

This paper seeks to encourage debates about corporate power and human rights and calls for the accounting and corporate social responsibility literature to connect with human rights. It highlights concerns about intensification of globalization and the rising power of corporations through an examination of the risk-management strategies used by transnational

<sup>4</sup> <http://www.guardian.co.uk/business/2003/jul/05/unilever1>; accessed 14 April 2010.

<sup>5</sup> This is available at <http://www.un.org/en/documents/udhr/>.

<sup>6</sup> The principles of UDHR have been codified into a number of treaties, conventions and binding legal obligations (Cronin-Furman, 2010). Chief amongst these is the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), which covers matters such as the freedom from gender, religious and racial discrimination; right to life, work for a fair wage, education, decent living, housing and food, safe and healthy working conditions, form trade unions and the right to the highest attainable standard of physical and mental health. The ICESCR is accompanied by the International Covenant on Civil and Political Rights (ICCPR) and requires each state to protect the civil and political rights of individuals, including freedom of religion, speech, assembly, association, join a political party, vote, right to life and equality before the law.

<sup>7</sup> The Organisation for Economic Co-operation and Development (OECD) recommends that “enterprises should . . . respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments” (OECD, 2000, p. 11). However, its recommendations are non-binding and considered to be “weak” (Ratner, 2001, p. 457).

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